US Environmental Protection Agency,
Docket ID No.EPA-HQ-OW-2007-1126,
EPA Docket Center (EPA/DC),
Water Docket, MC 2822T,
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Sirs:

The draft Action Plan has been difficult to review because the plan is inconsistent in its discussion of critical issues. On one hand, it talks about an adaptive management framework and "the continued implementation of cost-effective, voluntary best management and conservation practices at the local and regional level". On the other hand, it provides "a basin wide context for the continued pursuit of regulatory controls for point sources," nutrient criteria and standards, TMDLs, NPDES permits and a quantitative goal.

Nutrient standards and TMDLs to protect the Gulf

The draft Action Plan states *Numeric water quality standards for nitrogen and phosphorus are essential for achieving the necessary reductions in nitrogen and phosphorus loading in the basin. Water quality standards provide the formulation for development of NPDES permit limits, TMDLs, and trading. In the near term, state adoption of numeric water quality standards for nitrogen and phosphorus for tributaries of the Mississippi and Missouri Rivers is expected to lead to reductions in nutrient loadings to these rivers and downstream in the Gulf of Mexico.*

We do not agree that numeric water quality standards for nitrogen and phosphorus are essential for achieving the necessary reductions in nutrients. States adopt water quality standards to protect the uses designated for the waters in their jurisdiction, e.g. drinking water supply and aquatic life protection. Illinois currently has a nitrate standard applicable at the point of withdrawal for public water supply purposes, but may not need a nitrogen standard to protect either public water supply or aquatic life. For phosphorus, recent research in the state has shown that only a limited number of waterbodies are responsive to phosphorus. The form of a numerical phosphorus standard is unclear, and, as a result, credible, science-based standards may be years in the coming, if at all. Hence, it is unlikely that protection of local water quality through the use of numeric water quality standards will quickly or reliably result in co-benefit of reducing hypoxia. Nor do states have the framework to adopt standards solely for the protection of the Gulf of Mexico.

TMDLs can be important tools to address local water quality impairments. However, they are generally more effective for point source reductions than for non-point source control. When non-point sources predominate, a TMDL mainly serves an educational purpose. A state water pollution control program is still left with a strategy of engaging and persuading landowners to implement voluntary actions to reduce nutrients. The timeline, scope and certainty of reductions is highly variable. Even addressing point source pollution through a TMDL relies on the local water quality benefit—not all point sources in a particular basin will be required to control nutrients unless they discharge to the segment where an impairment would be resolved through reduction.

In our opinion, it would be more productive and protective of in-state waters as well as the Gulf to direct our resources and efforts to the actions that will directly reduce nutrient losses. First, as mentioned in more detail below, developing and implementing a state-level nutrient reduction strategy for both point and non-point sources with federal assistance would lead more quickly to nutrient reductions than developing nutrient standards (at least 2 more years in Illinois), developing related TMDLs (average of 3 years in Illinois) and implementing the TMDLs (3 + years for non-point source projects). Second, although point sources contribute a much smaller percentage of nutrients than do non-point sources on a basin-wide basis, USEPA should target resources through an enhanced Clean Water State Revolving Fund and, as necessary, use its authorities under the Clean Water Act to address those point sources that contribute significant loads of nutrients to in-basin waters and the Gulf. Finally, the federal agencies should align key federal funding (Section 319, USDA and USACE) to give highest priority to nutrient reduction projects.

Role of states

The draft Action Plan is also inconsistent in discussing the role of states in addressing hypoxia. The draft plan states*: **The guiding principle of this plan** is that when establishing priorities for watershed restoration, States, Tribes and Federal agencies within the Mississippi/Atchafalaya River Basin **will consider the potential for benefits to the Gulf of Mexico** (emphasis added).*

However, in other sections the plan is more prescriptive in describing the role of the states:

> *Existing plans may need to be modified to incorporate nitrogen and phosphorus reduction activities within the state to reduce loadings to the Gulf.*
>
> *However, most state, tribal and federal projects usually only address local water quality concerns. These entities **need to ensure that these projects……**also examine their effect on Gulf hypoxia as well as look for opportunities to increase the ability to reduce nutrients which harm local waters and the Gulf through design and operation changes.*

We agree that *"Implementation of the Action Plan will require a significant level of commitment from the Federal agencies and State and local governments and increased awareness and action by the many varied stakeholders"* and that nutrient reduction strategies should be developed at the state level. However, we do not agree that: *The states… have the lead for implementing most of the programs that will achieve the goals of this Action Plan*. If hypoxia in the northern Gulf of Mexico is truly a national problem, the federal government must take the lead. Particularly in the agricultural sector, where USDA policies and programs are dominant, state resources are inadequate to address these issues.

The federal agencies should recognize that, in many cases, state agency resources are already fully committed to addressing in-state water quality issues. While the draft Action Plan appears to recognize the need for additional funding, it includes no specific provisions for funding to states. We are also disappointed that, nearly eight years after passage of the Harmful Algal Bloom and Hypoxia Research and Control Act of 1998, the requirement of section 604(b) that the plan for reducing, mitigating, and controlling hypoxia in the northern Gulf of Mexico include the social and economic costs and benefits of the measures for reducing, mitigating, and controlling hypoxia has not been met. Initially, USEPA should provide funding to each state for

detailed studies of the social and economic costs and benefits within each state and for state-level assessments of the feasibility of potential solutions.

Illinois has made tremendous progress in controlling soil erosion and addressing in-state water-quality problems from both point and nonpoint sources. In 2004, Illinois implemented a 1 mg/L effluent standard for phosphorus for new and expanded POTW discharges greater than 1 MGD. As a result, phosphorus loading has been reduced by 328,500 pounds per year statewide. But without a higher level of confidence about the science behind the Action Plan and greater knowledge about the potential impacts of the proposed solutions on Illinois, we believe that the draft Action Plan should be revised to:

1. include a proper analysis of the economic and social costs and benefits,
2. include a clearer statement that the Task Force recognizes that states must first address in-state water quality needs,
3. identify specific sources of federal funding to achieve the ambitious goals of the Plan, and
4. de-emphasize discussion of state nutrient standards or regulation of point sources for nutrients unless there is a demonstrated need to do so to meet in-state, in-stream goals of fishable, swimmable or drinkable water.

Thank you for the opportunity to comment on the draft Action Plan for reducing, mitigating and controlling hypoxia in the northern Gulf of Mexico.

Sincerely,

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Director
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Acting Director
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